

In the Matter of Merchant Mariner's Document No. Z-886286
Issued to: DENNIS J. McCARTHY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DENNIS J. McCARTHY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 5 June, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-886286 issued to Dennis J. McCarthy upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as a messman on board the American SS STEEL RANGER under authority of the document above described, on or about 25 October, 1951, while said vessel was at sea, he wrongfully disobeyed a lawful order of a superior officer (First Specification), wrongfully used obscene and abusive language to a superior officer (Second Specification), and wrongfully assaulted and battered the Chief Officer, Fred Trofimoff (Third Specification); while serving as above on 4 October, 1951, he wrongfully disobeyed a lawful order of the Master (Fourth Specification); and while serving as a messman on board the SS STEEL SCIENTIST under authority of the above document on or about 26 August, 1952, while said vessel was at sea, he wrongfully disobeyed a lawful order of the Master (Fifth Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and the first four specifications proffered against him; and he pled "not guilty" to the Fifth Specification.

Thereupon, the Investigating Officer made his opening statement and Appellant made a statement in mitigation.

The Investigating Officer then introduced in evidence a certified copy from the Official Logbook of the STEEL SCIENTIST to support the Fifth Specification.

In defense of the Fifth Specification, Appellant testified under oath that he had no recollection of the alleged incident.

At the conclusion of the hearing, having given both parties an

opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea to the first four specifications and by proof of the Fifth Specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-886286, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of fifteen months - six months outright and the balance of nine months on eighteen months probation from 5 December, 1953.

This appeal from the Order of the Examiner is a plea for clemency stating that on 25 October, 1951, the Chief Officer had grabbed Appellant and pushed him; and that Appellant will never cause any more trouble if he is given another chance.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage covering the dates of 4 October, 1951, to 25 October, 1951, Appellant was serving as a messman on board the American SS STEEL RANGER and acting under authority of his Merchant Mariner's Document No. Z-886286 while the ship was at sea.

On 4 October, 1951, Appellant disobeyed a direct order of the Master to leave the officers' saloon. Appellant eventually obeyed the order but only after arguing with the Master about it.

On 25 October, 1951, the Chief Officer remarked to Appellant concerning the uncleanly conditions of spaces for which Appellant was responsible. An argument followed and Appellant struck the Chief Officer after he had grasped Appellant by the arm and ordered him to clean up the spaces in question. Later on the same day, Appellant directed foul and abusive language towards the Chief Officer when he told Appellant that the Master wanted to see him.

Appellant is a young man and has been going to sea for only two years.

OPINION

There are no findings of fact with respect to the Fifth Specification because the log entry (which is the only evidence tending to prove this specification) does not indicate conformance with the statutory requirements that Appellant be furnished a copy of the entry and have his reply entered in the logbook (46 U.S.C. 701). Therefore, the log entry did not establish a prima facie case and the Fifth Specification is dismissed.

Concerning the other four specifications, the facts speak for themselves. During a career of approximately two years at sea, Appellant disobeyed, assaulted, and verbally abused either the Master or the Chief Officer who were the two senior officers in command. In view of the strict discipline required on board ships, I think that the order imposed was extremely lenient; and it will be sustained despite the dismissal of the Fifth Specification. Appellant will be "given another

chance" beginning at the expiration of the outright suspension of six months.

ORDER

The Order of the Examiner dated at New York, New York, on 5 June, 1953, ~~is~~ AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 14th day of August, 1953.